

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

NORFOLK COUNTY RETIREMENT SYSTEM,]	
individually and on behalf of all others similarly]	
situated]	Civil Action No. 11-cv-0433
]	
Plaintiff]	Class Action
]	
vs.]	Judge Waverly D. Crenshaw, Jr.
]	Magistrate Judge Joe B. Brown
COMMUNITY HEALTH SYSTEMS, INC.,]	
WAYNE T. SMITH and W. LARRY CASH]	JURY TRIAL DEMANDED
]	
Defendants]	

RESPONSE AND OBJECTIONS TO LEAD PLAINTIFF'S NOTICE
OF RULE 45 SUBPOENA FOR NON-PARTY EDWARD M. YARBROUGH

This response and objections to lead Plaintiff's Notice of Rule 45 Subpoena for Non-Party Edward M. Yarbrough, dated July 17, 2018, are served by Edward M. Yarbrough, pursuant to Rule 45(d)(2)(B) of the Rules of Civil Procedure. The response is made in good faith upon inquiries made within the timeframe provided. Mr. Yarbrough reserves the right to alter, supplement, amend or otherwise modify this response in any manner, at any time, in light of additional facts revealed through subsequent inquiry or otherwise brought to his attention.

The subpoena mentioned above makes one request which is as follows:

Request No. 1:

Notes taken by you or your Employee during the interview of Carolyn Lipp by the U.S. Department of Justice (or other Governmental Agency) related to the investigation of business practices at CHSI, as discussed by Ms. Lipp at her deposition taken on August 25, 2016 in *In re Community Health Systems, Inc. Shareholder Derivative Litigation*, No. 3:11-cv-0489 (M.D. Tenn.), at pp. 86-89.

In direct response to this request I can state to the Court that no such notes were taken at the interview of Carolyn Lipp by Government attorneys because at the time of that interview there was concern that collateral civil litigation might ultimately lead to the discovery of such notes and as a tactical matter it was not believed to be in Ms. Lipp's best interest that such notes be taken. Therefore, the specific request contained in the subpoena must be denied because the first portion, notes taken by Edward M. Yarbrough, do not exist. As to the second part of the request aimed at production of notes taken by an employee, a thorough search of the file in this case does not reveal the existence of any such notes taken by co-counsel, Erin Palmer Polly, at the meeting with the Department of Justice. However, the file does contain handwritten notes by Ms. Polly taken on March 22, 2012, at a meeting with Carolyn Lipp and her attorneys, including several attorneys for CHS with whom we had a joint defense agreement at the time. Therefore, these notes would be covered by the attorney/client privilege as well as the attorney work product privilege and not discoverable unless ordered by the Court after an appropriate hearing.

As a practical matter, Mr. Yarbrough cannot attend the date mentioned in the subpoena because he is scheduled to be lead counsel for a three-day hearing in the Superior Court of the State of California for the County of San Bernardino Probate Division, Case No. 1600025 on Monday, July 30 through Thursday, August 2, 2018.

In summary, the notes which were specifically requested apparently never existed or no longer exist. The other notes which were found in the file, and which were not specifically requested by the subpoena, appear to be privileged material and not producible unless the Court finds that the privileges have been waived or that production is required in order to promote overall justice in this matter.

Respectfully submitted,

/s/ Edward M. Yarbrough

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July 2018, a copy of the foregoing response was served via e-mail and U.S. Mail, postage prepaid, upon the following:

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/s/ Edward M. Yarbrough